

## **REMARKS**

Claims 1-5 and 7-34 are currently pending in this application, claims 14-25 having been withdrawn from consideration. Claim 6 has been cancelled. Claims 3-5, 7-9 have been amended to change the multiple dependency to dependency on claim 1. Claim 13 has been amended to change the multiple dependency to dependency on claim 11. Claims 2, 10 and 12 have been amended to have correct antecedent basis for the methods they depend on. Claim 1 has been amended to include the limitation that the primary controller has a “receiver to receive data from the implanted device.” Basis for this amendment can be found in originally filed claim 6. Claim 3 has been amended to remove the term “antenna format” and affirmatively claim an “antenna”. Claim 4 has been amended to remove the term “antenna format” and affirmatively claim an “antenna” of types set forth in a markush group. Claim 11 has been amended to include the limitation of the primary controller further comprising “a receiver to receive data from an antenna based device at a second position”. Basis for this amendment can be found in originally filled claim 6. Claims 26-33 have been added to include additional limitations to the claimed medical appliance of claim 9. No new matter has been added by these amendments.

The Office Action objected/rejected the parts of the application as follows: The title of the application has been objected to as not being clearly indicative of the invention. Claims 4-10 stand objected to as containing incorrect multiple dependent claims. Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph as not containing antecedent basis for the term “antenna format”. Claims 1, 2 and 11-13 stand rejected under 35 U.S.C. § 102(e)

over U.S. Patent No. 6,210,347 issued to Forsell (hereinafter “Forsell”). Claims 3 stands rejected under 35 U.S.C. § 103(a) as being obvious over Forsell in view of U.S. Patent No. 5,583,510 issued to Ponapalli et al. (hereinafter “Ponapalli”). Applicants respectfully traverse these rejections for at least the reasons provided below.

#### **Objection to the title**

The Examiner has objected to the title of the application as not being clearly indicative of the invention. Applicants have amended the title of the application as recommended by the Examiner. Applicants respectfully request that the Examiner withdraw the objection to the title.

#### **Objections to the Claims**

Claims 4-10 stand objected to as containing improper multiple dependent claims. Claims 4-10 have been amended to eliminate multiple dependent claim language. Applicants respectfully submit that the amendments to claims 4-10 have obviated the objection and respectfully request that the objection to the claims be withdrawn.

#### **Rejections under 35 U.S.C. §112**

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph as not containing antecedent basis for the term “antenna format”. Applicants respectfully submit that the amendments to claim 3 have obviated the rejection and respectfully request that the rejection be withdrawn.

**Rejections under 35 U.S.C. §102(e)**

Claims 1, 2 and 11-13 stand rejected under 35 U.S.C. §102(e) as anticipated by Forsell. Applicants respectfully submit that Forsell fails to anticipate claims 1, 2 and 11-13 of the present invention, as amended, as it fails to disclose all of the elements of the claims.

Claim 1, upon which claim 2 depends, contains the limitation of “a primary controller comprising a power source, a transmitter and a receiver to receive data from the implanted device locatable at the first location.” Claim 11, on which claims 12-13 depend, contains the limitation of a primary controller comprising “a power source, a transmitter and a receiver to receive data from an antenna based device at a second position”, the second position being “internal of the living body”. The exterior component of the food intake restriction device of Forsell does not contain a receiver that can receive data from the device implanted in an individual. The Forsell patent only discloses a device communication arrangement which is capable of one way communication from the external unit to the internal unit. Forsell discloses a remote control means that “comprises a motor for operating the adjustment device and an energizer unit for providing energy. The signal receiving means comprises a control unit adapted to power the motor with energy provided by the energizer unit in response to signals received from the signal transmitting means.” (See Col. 2, lines 35-40 of Forsell). The Forsell patent does not teach or suggest that the remote control unit has a receiving means to receive signals transmitted by the internal adjustment device.

As the Forsell fails to teach an external primary controller unit having a receiver to receive data from an implanted device, the reference fails to anticipate claims 1, 2 and 11-13

of the present invention. Based on the preceding comments, Applicants respectfully request that the §102 rejections be withdrawn.

### **Rejections under 35 U.S.C. §103**

Claim 3 stands rejected under 35 U.S.C. §103 as being unpatentable over Forsell, in view of Ponapalli. The Examiner states that, “it would have been obvious to...modify the receiving antenna of Forsell by replacing it with the planar omnidirectional antenna of Ponapalli. The motivation for doing so would have been to transmit higher frequency signals (i.e. 2.4-2.483 GHz) in the industrial, scientific, and medical (ISM) band.” (Official Action at 4-5.)

Applicants respectfully submit that the Office Action has failed to put forth a *prima facie* case of obviousness, as the Forsell and Ponapalli references, alone or in combination, fail to teach or suggest all of the limitations of the present invention.

As discussed above, Claim 1, upon which claim 3 depends, contains the limitation of “a primary controller comprising a power source, a transmitter and a receiver to receive data from the implanted device locatable at the first location.” The Forsell reference does not teach or suggest an external component that contains a receiver that can receive data from the device implanted in an individual. The Ponapalli reference also fails to teach or suggest such a limitation. The Ponapalli reference is directed towards a multilayer cross antenna. The Ponapelli reference contains no teaching or suggestion of any system which provides two way communication between units inside and outside a body.

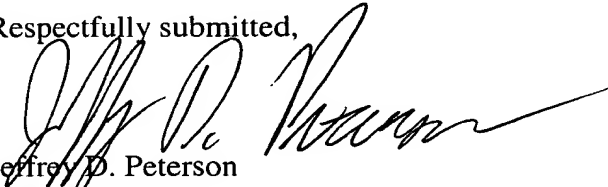
As neither the Forsell nor the Ponapalli reference, alone or in combination, teach or suggest an external primary controller unit having a receiver to receive data from an

implanted device, Applicants respectfully submit that the Office Action has failed to put forth a *prima facie* case of obviousness with respect to claim 3.

#### SUMMARY

Based on the foregoing, Applicants respectfully submit that the present application is in condition for allowance, and a favorable action thereon is respectfully requested. Should the Examiner feel that any other point requires consideration or that the form of the claims can be improved, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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